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9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 DANA RUTH LIXENBERG, an
13 Individual,
14 Plaintiff,
15
16 v.

17 BIOWORLD MERCHANDISING, INC.,
18 a Texas Corporation; REMRYLIE
LICENSING, INC., a California
19 Corporation; MACY'S RETAIL
20 HOLDINGS, INC., an Ohio Corporation;
MACY'S, INC., an Ohio Corporation;
21 TARGET CORP., a Minnesota
22 Corporation; URBAN OUTFITTERS,
INC., a Pennsylvania Corporation;
23 FOREVER 21, INC., a California
24 Corporation; FOREVER 21 RETAIL,
INC. a California Corporation; and DOES
25 1-10,

26 Defendants.
27

Case No.:

PLAINTIFF'S COMPLAINT FOR:

1. COPYRIGHT INFRINGEMENT;
2. VICARIOUS AND/OR
CONTRIBUTORY COPYRIGHT
INFRINGEMENT

Jury Trial Demanded

1 DANA RUTH LIXENBERG, by and through her undersigned attorneys,
2 hereby prays to this honorable Court for relief based on the following:

3 **INTRODUCTION**

4 LIXENBERG is a renowned photographer who has created numerous
5 compelling and intimate images depicting a wide swath of humanity. One of her
6 projects explored the lives of residents of a housing project in Watts, California;
7 others captured musicians and celebrities in authentic and resonant compositions.

8 Two of LIXENBERG's most celebrated series of photographs depict the late
9 recording artists Christopher "Notorious B.I.G" Wallace and Tupac Shukar. These
10 photographs, set forth in the left column of **Exhibit A** and referenced hereinafter as
11 the "Subject Photographs", have been misappropriated and used without permission
12 by the Defendants, and each of them. These Defendants licensed, created, distributed,
13 marketed and sold product bearing the Subject Photographs, and did so without
14 seeking authorization from LIXENBERG. Indeed, none of the Defendants even
15 advised LIXENBERG of their plot to exploit her photographs. This action follows to
16 address the infringement.

17 **JURISDICTION AND VENUE**

18 1. This action arises under the Copyright Act of 1976, Title 17 U.S.C., §§
19 101, *et seq.*

20 2. This Court has federal question jurisdiction under 28 U.S.C. § 1331 and
21 1338 (a) and (b).

22 3. Venue in this judicial district is proper under 28 U.S.C. § 1391(c) and
23 1400(a) in that this is the judicial district in which a substantial part of the acts and
24 omissions giving rise to the claims occurred.

25 **PARTIES**

26 4. LIXENBERG is an individual residing in the state of New York in the
27 United States.

1 5. Plaintiff is informed and believes and thereon alleges that Defendant
2 BIOWORLD MERCHANDISING, INC. (“BIOWORLD”) is a Texas corporation
3 doing business in, and with the residents of, the State of California.

4 6. Plaintiff is informed and believes and thereon alleges that Defendant
5 REMRYLIE LICENSING, INC. (“REMRYLIE”) is a California corporation doing
6 business in, and with the residents of, the State of California.

7 7. Plaintiff is informed and believes and thereon alleges that Defendant
8 MACY’S RETAIL HOLDINGS, INC. and MACY’S, INC. (collectively “MACYS”)
9 are Ohio corporations doing business in, and with the residents of, the State of
10 California.

11 8. Plaintiff is informed and believes and thereon alleges that Defendant
12 TARGET CORP. (“TARGET”) is a Minnesota corporation doing business in, and
13 with the residents of, the State of California.

14 9. Plaintiff is informed and believes and thereon alleges that Defendant
15 URBAN OUTFITTERS, INC. (“URBAN”) is a Pennsylvania corporation doing
16 business in, and with the residents of, the State of California.

17 10. Plaintiff is informed and believes and thereon alleges that Defendants
18 FOREVER 21, INC. and FOREVER 21 RETAIL, INC. (collectively “FOREVER”)
19 are California corporations doing business in, and with the residents of, the State of
20 California.

21 11. Defendants DOES 1 through 10, inclusive, are other parties not yet
22 identified who have infringed Plaintiff’s copyrights, have contributed to the
23 infringement of Plaintiff’s copyrights, or have engaged in one or more of the
24 wrongful practices alleged herein. The true names, whether corporate, individual or
25 otherwise, of Defendants 1 through 10, inclusive, are presently unknown to Plaintiff,
26 which therefore sue said Defendants by such fictitious names, and will seek leave to
27

1 amend this Complaint to show their true names and capacities when same have been
2 ascertained.

3 12. Plaintiff is informed and believes and thereon alleges that at all times
4 relevant hereto each of the Defendants was the agent, affiliate, officer, director,
5 manager, principal, alter-ego, and/or employee of the remaining Defendants and was
6 at all times acting within the scope of such agency, affiliation, alter-ego relationship
7 and/or employment; and actively participated in or subsequently ratified and adopted,
8 or both, each and all of the acts or conduct alleged, with full knowledge of all the
9 facts and circumstances, including, but not limited to, full knowledge of each and
10 every violation of Plaintiff's rights and the damages to Plaintiff proximately caused
11 thereby.

12 **CLAIMS RELATED TO SUBJECT PHOTOGRAPHS**

13 13. LIXENBERG created and owns the Subject Photographs attached hereto
14 in the left column of **Exhibit A**, which is hereby incorporated as if set forth in full.

15 14. The Subject Photographs have been submitted for registration with the
16 United States Copyright Office.

17 15. Plaintiff is informed and believes and thereon alleges that Defendants
18 accessed the Subject Photographs and then exploited them without the authorization
19 of Plaintiff. Defendants, and each of them, exploited the Subject Photographs by
20 incorporating same into various products, including without limitation, apparel
21 (collectively the "Accused Products"). Non-inclusive exemplars of the Accused
22 Products are depicted in the right column of **Exhibit A** alongside that of the Subject
23 Photographs that are unlawfully incorporated in the respective Accused Products.
24 These exemplars are not meant to encompass all Accused Products; the claims made
25 herein are as to any product licensed, distributed and/or sold by Defendants, and/or
26 each of them, that incorporate without permission, in whole or in part, one or more of
27 the Subject Photographs.

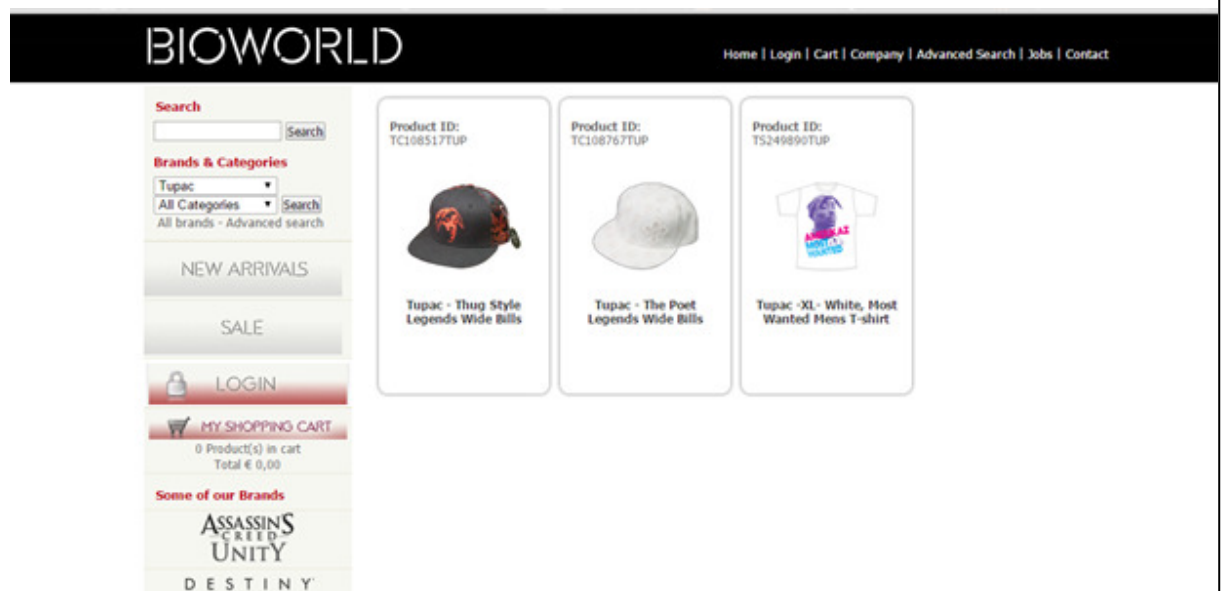
16. A comparison of the Subject Photographs with the images on the Accused Products reveals that the elements, composition, colors, arrangement, subject, lighting, angle, and overall appearance of the images are identical or at least substantially similar.

17. On information and belief, Plaintiff alleges that BLOWORLD and REMLYRIE, and each, were involved in licensing and/or developing the Accused Products, and/or supplying, distributing, and otherwise providing the Accused Products to MACYS, TARGET, FOREVER, and URBAN, which in turn sold the Accused Products to third parties, including without limitation, the public.

18. LIXENBERG at no point authorized Defendants, or any of them, to use the Subject Photographs as complained of herein.

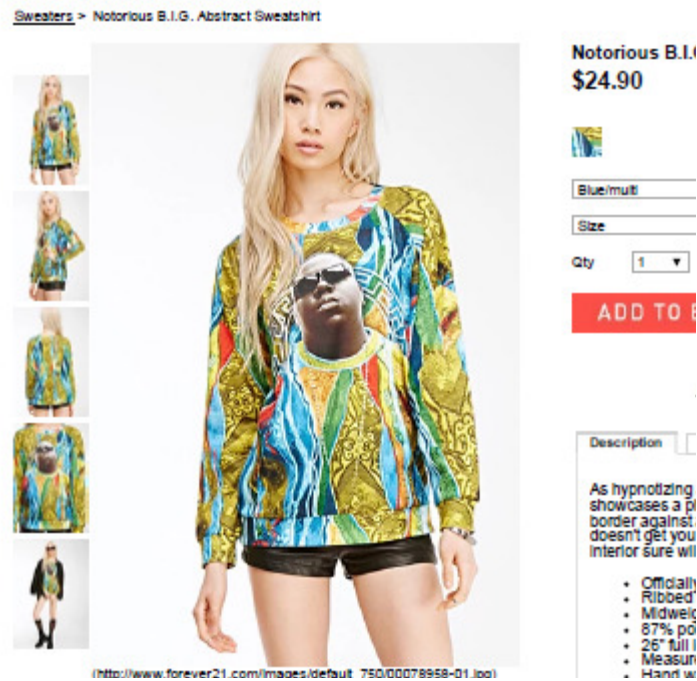
19. Cease and desist demand were made to BLOWORLD and certain other Defendants as early as April of 2015.

20. As of August 2015, BLOWORLD was still displaying at least two Accused Products on its website, as depicted below:



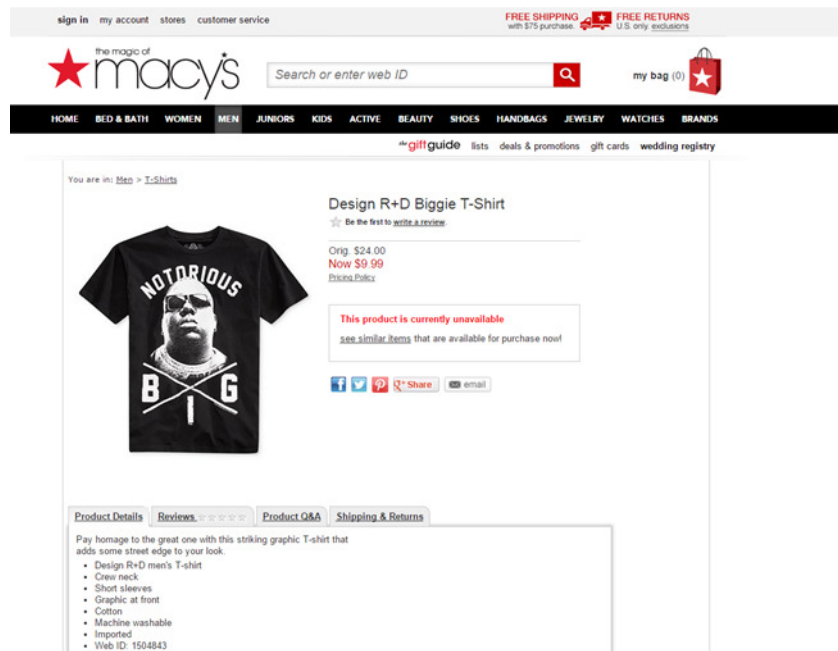
21. A **cease and desist** demand was made to FOREVER in April of 2015.

22. As of August 2015, FOREVER was still displaying at least one of the Accused Products on its website, as depicted below:



23. A cease and desist demand was made to MACYS in March of 2015.

24. As of August 2015, MACYS was **still displaying** at least one of the Accused Products on its website, as depicted below:



FIRST CLAIM FOR RELIEF

(For Copyright Infringement – Against all Defendants, and Each)

25. LIXENBERG repeats, re-alleges, and incorporates herein by reference as though fully set forth, the allegations contained in the preceding paragraphs of this Complaint.

26. LIXENBERG is informed and believes and thereon alleges that Defendants, and each of them, had access to the Subject Photographs, including, without limitation, through viewing the Subject Photographs in or on LIXENBERG's publications, profiles, exhibitions, websites and/or through other authorized channels, over the internet, including without limitation as accessed via a search engine, or through a third party source.

27. LIXENBERG is further informed and believes and thereon alleges that certain Defendants have an ongoing business relationship with one or more of the other Defendants, and that those defendants transacted in order to traffic in the Accused Products.

28. Plaintiff is informed and believes and thereon alleges that, without Plaintiff's authorization, Defendants, and each of them, distributed, marketed and sold product bearing images that are identical to, or substantially similar to, the Subject Photographs.

29. LIXENBERG is informed and believes and thereon alleges that Defendants, and each of them, infringed LIXENBERG's copyrights by licensing the Subject Photographs and/or creating an infringing work from the Subject Photographs and then distributing and selling the Accused Products to the public.

30. Defendants, and each of them, infringed LIXENBERG's rights by copying the Subject Photographs, and distributing the Accused Products, without LIXENBERG's authorization or consent.

1 of them, realized profits through their respective obtainment, sales and distribution of
2 the Accused Products.

3 36. LIXENBERG is informed and believes and thereon alleges that
4 Defendants, and each of them, are vicariously liable for the infringement alleged
5 herein because they had the right and ability to supervise the infringing conduct and
6 because they had a direct financial interest in the infringing conduct. Specifically,
7 each Defendant in the supply chain had the ability to oversee the development and
8 distribution of the product as engaged in by the party from which it obtained the
9 Accused Products, or component thereof. And, Defendants, and each of them,
10 realized profits through their respective obtainment, sales and distribution of the
11 Accused Products.

12 37. By reason of Defendants', and each of their, acts of contributory and
13 vicarious infringement as alleged above, LIXENBERG has suffered and will continue
14 to suffer substantial damages to her business in an amount to be established at trial, as
15 well as additional actual, general and special damages in an amount to be established
16 at trial.

17 38. Due to Defendants' acts of copyright infringement as alleged herein,
18 Defendants, and each of them, have obtained direct and indirect profits they would
19 not otherwise have realized but for their infringement of LIXENBERG's rights in the
20 Subject Photographs. As such, LIXENBERG is entitled to disgorgement of
21 Defendants' profits directly and indirectly attributable to Defendants' infringement of
22 his rights in the Subject Photographs, in an amount to be established at trial.

23 39. LIXENBERG is informed and believes and thereon alleges that
24 Defendants, and each of their, conduct as alleged herein was willful, reckless, and/or
25 with knowledge, subjecting Defendants, and each of them, to enhanced statutory
26 damages, claims for costs and attorneys' fees, and/or a preclusion from deducting
27 certain overhead when calculating disgorgeable profits.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for judgment as follows:

Against All Defendants

With Respect to Each Claim for Relief

- a. That Defendants, their affiliates, agents, and employees be enjoined from infringing Plaintiff's copyrights in and to the Subject Photographs.
- b. That Plaintiff be awarded all profits of Defendants, and each, plus all losses of Plaintiff, plus any other monetary advantage gained by the Defendants through their infringement, the exact sum to be proven at the time of trial, or, if elected before final judgment, statutory damages to the extent they are available under the Copyright Act, 17 U.S.C. §§ 101, *et seq.*;
- c. That Plaintiff be awarded its costs and attorneys' fees to the extent they are available under the Copyright Act U.S.C. §§ 101, *et seq.*;
- d. That a trust be entered over all Accused Products, and all profits realized through the sales and distribution of said product;
- e. That Plaintiff be awarded pre-judgment interest as allowed by law;
- f. That Plaintiff be awarded the costs of this action; and
- g. That Plaintiff be awarded such further legal and equitable relief as the Court deems proper.




**A TRIAL BY JURY PURSUANT TO FED. R. CIV. P. 38 AND
CONSTITUTIONAL AMENDMENT SEVEN IS HEREBY DEMANDED.**


Respectfully submitted,

Dated: September 15, 2015




By: /s/ Scott Alan Burroughs
Scott Alan Burroughs, Esq.
DONIGER / BURROUGHS
Attorneys for Plaintiff
DANA RUTH LIXENBERG

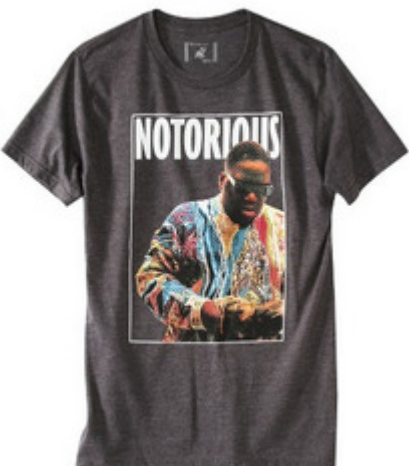

EXHIBIT A

SUBJECT PHOTOGRAPHS	OFFENDING PRODUCT EXEMPLAR
	
SEE ABOVE.	



SUBJECT PHOTOGRAPHS	OFFENDING PRODUCT EXEMPLAR
SEE ABOVE.	
SEE ABOVE.	
SEE ABOVE.	



SUBJECT PHOTOGRAPHS	OFFENDING PRODUCT EXEMPLAR
SEE ABOVE.	
SEE ABOVE.	

SUBJECT PHOTOGRAPHS	OFFENDING PRODUCT EXEMPLAR
 <p data-bbox="462 955 625 976">TM Bizzola Inc.</p>	
<p data-bbox="438 1123 633 1165">SEE ABOVE.</p>	

SUBJECT PHOTOGRAPHS	OFFENDING PRODUCT EXEMPLAR
<p>1 SEE ABOVE.</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p>	<p>Notorious B.I.G. Men's T-Shirt</p> 
<p>11 SEE ABOVE.</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p>	
<p>27</p> <p>28</p> <p>15 COMPLAINT</p>	

<u>SUBJECT PHOTOGRAPHS</u>	<u>OFFENDING PRODUCT EXEMPLAR</u>
	
	

SUBJECT PHOTOGRAPHS	OFFENDING PRODUCT EXEMPLAR
<p>1 SEE ABOVE.</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p>	
<p>16 SEE ABOVE.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p>	
<p>28 17 COMPLAINT</p>	

SUBJECT PHOTOGRAPHS	OFFENDING PRODUCT EXEMPLAR
SEE ABOVE.	
SEE ABOVE.	

SUBJECT PHOTOGRAPHS	OFFENDING PRODUCT EXEMPLAR
SEE ABOVE.	
SEE ABOVE.	

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